No. 252

In the Supreme Court of the United States

OCTOBER TERM, 1941

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL., APPELLANTS

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND ALLEN-BRADLEY COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

MEMORANDUM FOR THE UNITED STATES AMICUS CURIAE

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MEMORANDUM FOR THE UNITED STATES AMICUS CURIAE

This memorandum is submitted in response to a request from this Court to the Solicitor General that the Government submit a brief advising the Court of the Government's position on the question whether the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Sec. 151, *et seq.*) supersedes the Wisconsin Peace Employment Act, Wisc. Laws of 1939, c. 57, Wisc. Stat. (1939), c. 111.

PRELIMINARY STATEMENT

The critical facts presenting the issue of supersedure may be briefly summarized as follows: Allen-Bradley Company (herein called the Company) is subject to the National Labor Relations Act, and the National Labor Relations Board (R. 2, 22, 36). The Wisconsin Employment Relations Board (herein sometimes called the State Board), upon complaint filed by the Company (R. 28–31), and after hearing, issued findings and an order (R. 13–17). The State Board found that Allen-Bradley Local No. 1111, United Electrical, Radio, and Machine Workers (herein called the Union), and 14 named employees had committed certain unfair labor practices within the meaning of the Wisconsin Peace Employment Act (herein sometimes called the State Act) (R. 13–16); it accordingly ordered the Union and its members to cease and desist from engaging in mass picketing at or near the Company's plant, from threatening employees of the Company with physical injury, property damage, or otherwise, from obstructing or interfering with entrance to and egress from the Company's factory, from obstructing or interfering with the free and uninterrupted use of the streets, public roads and sidewalks surrounding the Company's factory, and from picketing the domicile of any employee (R. 16–17). The State Board also ordered the Union

to post appropriate notices (R. 17). Although Section 111.02 (3) (b) of the State Act defines an employee, *inter alia*, as one "who has not been found to have committed or to have been a party to any unfair practice hereunder", and although the Company, in its prayer for relief, requested the State Board to declare that such persons as might be determined to have committed or to have been parties to any unfair labor practices were no longer employees of the Company as defined in Section 111.02 (3) (b) (R. 31), the State Board did not supplement its finding that the 14 individuals had committed unfair labor practices with a further finding or order that such individuals had thereby lost their status as employees. The Wisconsin Supreme Court, in enforcing the State Board's order, expressly held that the State Board had discretion in the matter, that the employee status does not automatically terminate on a finding of unfair labor practices, and that since the Board did not declare or order such termination, the 14 individuals retained their status as employees (R. 50–51, 52).[1]

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[1] The Wisconsin Supreme Court in an earlier case (*Hotel etc. Employees* v. *Wisconsin Employment Relations Board*, 236 Wis. 329, 345) apparently held that an individual found to have committed an unfair labor practice thereby lost his status as an employee. But if the Wisconsin Supreme Court did so hold, it clearly overruled that holding in the instant case.

The question presented is, therefore, whether the State Board's order, as construed by the Wisconsin Supreme Court, or the State Act pursuant to which the State Board issued its order, is invalid since applied to a company whose employer-employee relations are subject to the National Labor Relations Act.

ARGUMENT

I

The question of supersedure may arise in one of two postures, depending upon the decision of the Court as to the scope of the issues before it. Appellees contend that, for purposes of the present case, the State Act must be read as though it contained only provisions authorizing the State Board to enter orders of the specific type now before the Court;[2] appellants contend, on the other hand, that the State Act may not be read in such disjunctive fashion and that the question before the Court is whether the State Act is invalid in its entirety (Br. 49–51).

Different considerations with respect to supersedure may prevail, depending upon which view the Court takes of this controversy over the scope of the issues in this particular case. Consequently, full compliance with the Court's request to be advised of the Government's position on the question of supersedure requires us to con-

[2] See Brief of Wisconsin Employment Relations Board, pp. 16–26; Brief of Allen-Bradley Co., pp. 33–34.

sider the question in both possible postures in which it may be presented. Accordingly, we consider first whether there is any conflict between the National Labor Relations Act and the State Act, read for purposes of this case as though it authorized only the type of order here involved, and second, whether there is conflict between the National Labor Relations Act, on the one hand, and, on the other, the State Act considered as an inseparable whole.

II

If, as appellees contend, the State Act must be read for purposes of the present case as though it contained only provisions authorizing the State Board to enter orders of the specific type now before this Court—in other words, if the case is to be considered as though those provisions constituted a separate statute and as though the remainder of the Wisconsin Peace Employment Act were not in existence—we believe that no conflict with the National Labor Relations Act does exist.

Nothing in the terms or the legislative history of the National Labor Relations Act bars appropriate State regulation of employee misconduct of the type prohibited in the order here in controversy. This Court has said (*Savage v. Jones*, 225 U. S. 501, 533):

> the intent to supersede the exercise by the State of its police power as to matters

not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field.

The only employee or union misconduct forbidden by the State Board in this case was mass picketing, threatening other employees with physical injury or property damage, obstructing entrance to and egress from the Company's factory, obstructing the streets surrounding the Company's property, and picketing the domicile of any employee. The State Board's order was directed against the appellant union and its members. No order was issued specifically directed toward the fourteen individuals found to have committed unfair labor practices, and they retained their status as employees of the Company.

We do not think that Congress intended to preclude a State from enacting legislation limited to prohibition of this type of employee misconduct.[8] On the contrary Congress expressly recognized that the authority of the several States could or would be exerted to prohibit such misconduct (S. Rep. No. 573, 74th Cong., 1st Sess., p. 16; H. Rep. No. 1147, 74th Cong., 1st

[8] We limit ourselves, of course, to the issue whether the State Board's order is invalid because superseded; whether the order may possibly be unconstitutional in its application in other respects is not an issue with which we deal here.

Sess., p. 16).[4] Such employee practices are not prohibited by the National Labor Relations Act, and the order in question could not have issued under the Act.

We believe, therefore, that the mere enactment of the National Labor Relations Act did not, without more, exclude State regulation, whether by administrative agencies or otherwise, exclusively dealing with the type of employee misconduct here forbidden and not depriving employees of rights protected by the National Act. Accordingly, if the Wisconsin statute is to be read as though it contained only provisions authorizing the State Board to issue orders of the specific type at bar, it could not be said that such orders are prohibited by some paramount federal act or intention.

III

Appellants urge, however, that the particular provisions of the statute under which the order was issued are an inseparable part of a single regulatory pattern designed to regulate the conduct of employees as well as of employers, and that the particular provisions upon which the order rests may not be regarded as a theoretically

[4] Compare the report of the National Labor Relations Board, Hearings before the Senate Committee on Education and Labor on S. 1000, S. 1264, S. 1392, S. 1550, S. 1580, and S. 2123 (76th Cong., 1st Sess., 1939), Pt. III, p. 521.

separate enactment. This view is of peculiar force because the statute deals very broadly with personal conduct in the field of labor relations and labor conflict, where the diverse activities of the participants and the parties affected by the statutory regulations necessarily react one upon the other. If the provisions referred to are considered by the Court as an intertwined part of a single regulatory pattern, as we believe they should be, the question would be posed whether the Wisconsin Act, considered as an inseparable whole, has been superseded by the federal enactment. This question, we think, must be answered in the affirmative.

A. Upon the face of the two statutes, serious differences and conflicts appear throughout their respective texts—set forth in parallel columns in Appellants' brief, pp. 55–81, and discussed at pp. 31–45 of that brief. Among these major differences are the following:

Labor policy.—It is the stated policy of the National Act to promote industrial peace by "encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

To promote this object, the Act is directed primarily against the forms of economic pressure

and authority frequently exercised by employers over their employees in an effort to maintain their superiority of bargaining position with respect to terms and conditions of labor. The stated statutory objective of the Act to encourage collective bargaining has been an important factor in its construction. See *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350; *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177.

This Court recognized long ago that the right to organize and bargain collectively was "fundamental," and that "union was essential to give laborers opportunity to deal on an equality with their employer." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209. In cases under the Act, this Court has recognized that even "slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure," *International Association of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 78, and that "intimations of an employer's preference, though subtle, may be as potent as outright threats of discharge." *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 600.

The individual worker exercises no such authority or power over his fellow workman in the

economic sphere. It is therefore a departure from the Congressional policy to suggest, as the State Act does, in its references to "interference" and "coercion" by either party (see 111.01 (2), 111.06 (2)), that employers and employees stand upon an equal footing in this respect, that workers and unions have no more legitimate concern in the organization of employees than have the employers themselves. This departure from Congressional policy is reflected in the variations of the State Act from the text of the Federal Act.

Definition of "employee."—Section 111.02 (3), defining "employee," includes any individual whose work has ceased in connection with any current labor dispute or because of any unfair labor practice and "who has not been found to have committed or to have been a party to any unfair labor practice hereunder * * *." Workers otherwise eligible for reinstatement could thus be excluded from their jobs, denied employment status, and denied the right to vote in employee elections, if they engage in practices deemed "unfair labor practices" under the State Act.

On the other hand, it is a settled policy under the National Labor Relations Act, judicially approved, that employee misconduct of the type involved in the instant case does not deprive an employee of his status as employee or of his protection guaranteed by the Act. E. g., *Republic*

Steel Corp. v. *National Labor Relations Board,* 107 F. (2d) 472 (C. C. A. 3), affirmed with modification in other respects, 311 U. S. 7; *National Labor Relations Board* v. *Stackpole Carbon Co.,* 105 F. (2d) 167 (C. C. A. 3), certiorari denied, 308 U. S. 605. Under the National Act, the employment status, and the privileges that flow from it, are not forfeited because of minor misconduct such as frequently occurs in the highly charged atmosphere of a labor dispute, misconduct "as common to labor disputes as a fist-fight upon a picket line." *National Labor Relations Board* v. *Stackpole Carbon Co., supra.* Yet, upon such grounds, an employee could be deprived of rights deemed by this Court to be "fundamental" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S., at p. 33)—rights not created, but recognized and enforced, by the National Act. See *Amalgamated Utility Workers* v. *Consolidated Edison Co.,* 309 U. S. 261.

Definition of "labor dispute."—Section 111.02 (8) of the State Act defines a labor dispute as a controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or procedure or details of collective bargaining or the designation of representatives. This definition substantially differs from that in the federal law (Section 2 (9)) in three important respects. First, the State Act excludes from the definition all controversies re-

garding wages, hours, and working conditions—the major cause of labor strife. Second, it excludes from the definition controversies between disputants who do not stand in the proximate relation of employer and employee. Cf. *Senn* v. *Tile Layers Union*, 301 U. S. 468; *Lauf* v. *Shinner*, 303 U. S. 322. Third, it excludes any controversy with employees who may at the moment represent only a minority in the proper bargaining unit but who may have legitimate grievances normally justifying strike action.

Bargaining units.—Section 111.02 (6) restricts the appropriate bargaining unit to a single employer, and provides that a majority of the employees in any craft, division, department, or plant may split off from any such unit and compel recognition as a separate unit. The National Act, on the other hand, provides generally that the National Board shall determine the proper unit in each case in order to insure to employees the full benefit of their right to self-organization and to collective bargaining. Section 9 (b).

The probabilities of conflict and confusion in these inconsistent provisions are endless. This Court is well aware of the difficulties involved in determining appropriate bargaining units. Cf. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146; *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, 308 U. S. 413; *International*

Association of Machinists v. *National Labor Relations Board,* 311 U. S. 72. The Court may also take judicial notice of the existing breach in the labor movement, and the conflicts as to jurisdiction and collective bargaining units which have resulted from that breach. Cf. *American Federation of Labor* v. *National Labor Relations Board,* 308 U. S. 401.

Collective Bargaining. Section 111.02 (5) defines collective bargaining as "the negotiating" by an employer and a majority of his employees "in a mutually genuine effort to reach an agreement." The National Act has no definition of this term, but the requirement of collective bargaining in Section 8 (5) has been construed to extend beyond the act of negotiation, and to include a written agreement when terms and conditions are actually agreed upon after negotiation. *H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514.

Section 111.06 (1) (d) provides that the employer is not guilty of refusing to bargain collectively in the event that he demands an election. The National Act imposes no such limitation. This provision is obviously subject to endless abuse by any employer anxious to avoid meeting his employees' representatives at the counsel table. Cf. *National Labor Relations Board* v. *Bradford Dyeing Assn.,* 310 U. S. 318; *International Association of Machinists* v. *National Labor Relations Board,* 311 U. S. 72.

Company-dominated unions. Section 111.06 (b) permits the employer to "cooperate" with representatives of a majority of his employees, at their request, by allowing "employe organizational activities on company premises or the use of company facilities where such activities or use create no additional expense to the company." Under the National Act, in a proper case, this is a form of forbidden employer support of a labor organization. See *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318.

Under the election procedure outlined in Section 111.05 (3), the State Board *must* list on the ballot the names of all "persons" (including organizations) submitted by an employee or group, except that it *may*, in its discretion, exclude from the ballot an organization which stands deprived of its status because previously adjudged to have engaged in an unfair labor practice. Under the National Act, the Board is most circumspect in placing on the ballot so-called "independent unions" which may, upon investigation, be shown to be company-dominated, or have the continuing benefit of the employer's prior unlawful assistance. Cf. *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 461; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, *supra*. Unsympathetic administration in this regard would make a mockery of the employees' rights.

Limitations on the right to strike.—Section 111.06 (2) (e) forbids employees to engage in specified strike activities unless a majority of the employees have voted for the strike and have served notice to this effect on the employer. The National Act, on the other hand, provides that nothing therein shall be construed to impede or interfere with or diminish in any way the right to strike (Section 13). We believe that the National Act reflects a federal policy with respect to the right to strike and that it is part of this federal policy that a minority will have the same right as the majority to engage in concerted strike activities.

Union disqualification.—Section 111.07 (4) authorizes orders by the State Board suspending for a period of a year the rights, immunities, privileges or remedies of the State Act to any "person," including a labor organization, found to have committed any unfair labor practice thereunder. Section 111.06 (3). Such practices, as defined in the State law, including minor misconduct, are not only punishable under the law, but result in disqualification and impairment of the all important substantive benefits granted by its terms. There is no such provision in the National Act. A comparable penalty on the employer would be the withdrawal of its corporate charter for a year if it countenances any breaches of the peace by its agents, guards, or hired detectives in

the course of a labor dispute. The peaceable settlement of labor disputes, and the orderly resumption of collective bargaining relations, is impaired, not assisted by such sweeping penalties.

On the foregoing analysis of the two statutes, the same employer and the same employees will have different status, rights and privileges arising from the same set of facts.

These conflicts in substantive law are not variations of a substantially similar pattern of employer-employee relationships; they represent vital differences in approach, in policy, and in practical effect. It is significant that ever since the National Act was placed upon the statute books, Congress has rejected repeated attempts to amend the National Act in many of these very respects. (E. g., S. 1264, 76th Cong., 1st Sess.; H. R. 4990, 76th Cong., 1st Sess.; H. R. 8813, 76th Cong., 3rd Sess.)

The conflicting statutes have led inevitably to a number of serious clashes in administration, affecting employment relations in plants subject to the National Act. These difficulties are described in concrete cases in a statement of the National Labor Relations Board to the Solicitor General, set forth in the Appendix for the convenience of the court (*infra*, pp. 26–34). These administrative difficulties have arisen in action by the State Board excluding from employee elections workers who would be eligible under the

National Labor Relations Act; establishing collective bargaining units differing from those established by the National Labor Relations Board; and qualifying for collective bargaining status so-called "independent unions" deemed company-dominated by the National Board. Indeed, in the very controversy at bar, it appears from the National Board's statement (*infra*, p. 28) that the State Board disqualified from voting in an employee election six workers who were discriminated against in violation of Section 8 (3) of the National Act and were reinstated under a settlement between the Company and the National Board. These six men are among the 14 who are found guilty of "unfair labor practices" by the State Board under the findings and order in this case.

In some instances, these conflicts of administration led to serious threats of strife threatening the free flow of interstate commerce. In all instances, the conflicts delayed and frustrated that stable and orderly settlement of employee-employer relations essential to industrial peace and fullest industrial efficiency. The National Board concludes that "the differing and conflicting provisions and objectives of the State Act have tended in practice to interfere with and frustrate the policies of the National Labor Relations Act." Significantly, the National Board reports that "there has been no such conflict or difficulty in various other States

which have enacted State Labor Relations Acts whose provisions and objectives are in harmony with those of the National Act, and whose State Boards have evidenced a cooperative attitude in administering the state Acts."

Administrative controversies such as those described by the Labor Board are embarrassing enough in time of peace. They take on added seriousness in a nation at war, when every material and human resource is strained to achieve maximum productive efficiency through employee-employer cooperation and voluntary arbitration of all disputes, predicated upon the national labor policy embodied in the National Labor Relations Act. (Executive Order No. 9017, establishing National War Labor Board, 7 Fed. Reg. 237.)

B. The constitutional principles applicable in such circumstances are clearly stated in the decisions of this Court. The National Labor Relations Act, a valid congressional enactment, is the supreme law of the land. "It is manifest that the enactment of this State law could not override the constitutional authority of the Federal Government. The State could not add to or detract from that authority." *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 223–224.

Some decisions of this Court go so far as to rule out all State authority over a subject matter

touched upon by congressional enactment, regardless of actual conflict. *Prigg* v. *Pennsylvania*, 16 Pet. 539, 617; *Houston* v. *Moore*, 5 Wheat. 1, 25; *Charleston & Carolina R. R.* v. *Varnville Co.*, 237 U. S. 597, 604; *Oregon-Washington R. R. & Nav. Co.* v. *Washington*, 270 U. S. 87. The reasoning is that State laws similar to Federal laws covering the same subject matter are "idle and inoperative," and those in conflict with Federal authority are invalid *a fortiori*.

We make no such contention here. Several State labor relations statutes are patterned closely after the National Act, have been administered in harmony with it, and serve an important function in the area of intrastate commerce. See Mass. Acts of 1938, c. 345, as amended; Acts of 1939, c. 318, as amended; Acts of 1941, c. 261; N. Y. Laws 1940, c. 4, 126, 569, 634, 689, 750, 773; Rhode Island Laws 1941, Sen. Bill No. 54A; Utah Laws 1937, c. 55. Cf. *Davega-City Radio* v. *N. Y. State Labor Relations Board*, 281 N. Y. 13. The original Wisconsin labor relations act, upheld in *Wisconsin Labor Relations Board* v. *Fred Rueping Leather Co.*, 228 Wis. 473, was in this category. Constitutional objection arises in the case at bar, not by any implication of exclusiveness drawn merely from the language or the "silence" of Congress, but from the manifest conflicts between the National Labor Relations Act and the

Wisconsin Employment Peace Act of 1939. These conflicts arise in the terms and practical administration of the two statutes when the State Act is applied, as here, to the production phase of a business producing goods for interstate commerce and admittedly (R. 48). subject to the National Act.

In contrast to other contemporary legislation, the National Labor Relations Act contains no clause declaring that state laws bearing on the same subject matter shall not be abrogated. E. g., Securities Act of 1933, 48 Stat. 85, 15 U. S. C., Sec. 77r; Securities Exchange Act of 1934, 48 Stat. 903, 15 U. S. C. Sec. 78bb. Cf. Fair Labor Standards Act, Sec. 18, 52 Stat. 1060, 29 U. S. C. Sec. 218. Rather, the Labor Act provides in Section 10 (a) that the Board's power to prevent the designated unfair labor practices "shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise." The Senate Committee on Education and Labor, in charge of the legislation, said in its Report (S. Rep. No. 573, *supra*, p. 15).

> Section 10 (a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this bill is paramount over other laws that might touch upon similar subject matters. Thus it is

> intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining.

While this provision of Section 10 (a) was largely directed at the diffusion of federal administrative responsibility under pre-existing law (id., pp. 4–5), this is a far cry from respondent's contention that Congress intended to permit state statutes to operate side by side with the National Act, affecting the same employees and interstate employers in inconsistent ways on the same set of facts. Certainly what Congress intended is clearly stated—"to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." Since Congress so plainly frowned on conflict at the federal level, there is certainly no reason to suggest it welcomed conflict between the federal law and state authority.

Manifestly the broad principles of collective bargaining embodied in the National Act could not be effectuated in interstate industries by the isolated action of competing individual states. Cf. *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 588; *United States* v. *Darby,* 312 U. S. 100, 122. Indeed, prior to its passage, there was no similar regulation in any State. Those same principles

would be certainly frustrated and impeded if any State were now held free to enact a conflicting statute with overlapping jurisdiction. Such a state statute could no more be tolerated in production plants using the channels of interstate commerce than in enterprises engaged in interstate transportation and subject to the Railway Labor Act.

C. We conclude that if it is to be considered as an inseparable whole, the State Act as applied to employees and employers within the jurisdiction of the National Labor Relations Act conflicts with, and must therefore be deemed superseded by, the paramount federal law. This conclusion does not render a State powerless to carry out its own policy within its proper sphere of constitutional authority, nor does it create a twilight zone of jurisdiction or regulation in which neither state nor federal authority may properly operate. A State is free to regulate employee or union misconduct by appropriate means, whether the plants in question are engaged in interstate or intrastate business. A State is also free to retain the substantive requirements of its statute intact as applied to intrastate plants not subject to the National Act, or in the alternative, to bring those substantive requirements into line with the National Act, as is done in the Massachusetts, New York, Utah and Rhode Island labor relations laws. All that the State cannot do is to impair the effectiveness or the policy of valid fed-

eral authority over interstate commerce, including those intrastate operations which directly affect that commerce. To that extent, the Constitution circumscribes the State's freedom of action.

It is true, as appellee State Board maintains (Br. p. 64), that the scope of the federal power must be viewed in the light of our dual system of government and may not be extended to obliterate the distinction between what is national and what is local. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37. That issue is one of degree, which is resolved in favor of the paramount federal law once it is conceded, as here, that the Company is subject to its terms. In this view, a state statute falls if it is an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67. Since the terms of the National Act must prevail as to employers engaged in interstate commerce or whose unfair labor practices directly affect that commerce, the requirements of the State Act are precluded, "however commendable or however different their purpose". *Napier* v. *Atlantic Coast Line*, 272 U. S. 605, 613. The Wisconsin statute is therefore not saved from constitutional objection because it is stated to be an exercise of the State's "police power" (R. 48).

This repugnance is not eliminated by the concession in the opinion below (R. 48) that the Na-

tional Act would take precedence if the jurisdiction of the National Board were invoked and an order issued against an interstate employer. Once the State Act, in terms or practical effect, is deemed to conflict with the National Act, it falls, even where no federal administrative action has been taken (*Napier* v. *Atlantic Coast Line,* 272 U. S. 605, 613) or, indeed, where the State's order in question could not have issued under the "conflicting" federal law. *Cloverleaf Butter Co.* v. *Patterson,* No. 28, present Term, decided February 2, 1942.

These conclusions are reinforced by the nature of the National Act. It creates no new private rights and grants no private right of action. "Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by the law declared to be detrimental to the public weal." H. Rep. No. 1147, 74th Cong., 1st Sess., p. 24; see *Amalgamated Utility Workers* v. *Consolidated Edison Co.,* 309 U. S. 261, 266–268. These national objectives are not to be defeated, embarrassed and frustrated by conflicting state law or administration, regardless of whether the employees or union in question happen to invoke the federal law, or the state

agency happens to apply the state statute, in a particular way in a particular case.

The state statute, as it stands, is capable of being given legal effect in the entire area of intrastate operations beyond the jurisdiction of the National Act. *Hatch* v. *Reardon,* 204 U. S. 152; *Bowman* v. *Continental Oil Co.,* 256 U. S. 642; *The Abby Dodge,* 223 U. S. 166. Whether the statute should be given such effect is for the state courts to determine in an appropriate case.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

FEBRUARY 1942.

APPENDIX

NATIONAL LABOR RELATIONS BOARD,
WASHINGTON, D. C., *February 7, 1942.*
H. A. Millis, *Chairman;* William M. Leiserson,
Gerard D. Reilly

Honorable CHARLES FAHY,
Solicitor General of the United States,
Washington, D. C.

DEAR MR. FAHY: In response to your request and at the direction of the National Labor Relations Board, I am advising you of the experience of the National Labor Relations Board in administering the National Labor Relations Act (49 Stat. 449, U. S. C., Title 29, Sec. 151 *et seq.*) in the State of Wisconsin since the enactment in 1939 of the Wisconsin Employment Peace Act (Wisconsin Laws of 1939, c. 57). The information herein stated is based upon a report submitted to the National Labor Relations Board by its Regional Director for the Twelfth Region which embraces the State of Wisconsin.

The concurrent exercise of jurisdiction by the National Labor Relations Board (hereafter called the National Board) and the Wisconsin Employment Relations Board (hereafter called the State Board) over unfair labor practice questions and over representation questions affecting interstate commerce has given rise to many problems difficult, and perhaps impossible, of solution. The difficulties have arisen largely because of the dif-

fering and to some extent conflicting provisions and statutory objectives of the two Acts. It is the considered conclusion of the National Board that the provisions and objectives of the Wisconsin Employment Peace Act (hereafter called the State Act) in so far as they depart from or conflict with those of the National Labor Relations Act (hereafter called the National Act) have in practice seriously interfered with and frustrated the declared policy of the United States set forth in the National Act—

> to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection (Section 1).

We shall set forth some of the specific instances in which the administration of the State Act has in practice conflicted and interfered with the administration of the National Act.

1. *Allen-Bradley Co., N. L. R. B. Case No. XII–C–473; W. E. R. B. Case No. 6 CW–1*

This is the same case as that which, we understand, is now pending before the Supreme Court of the United States. On June 5, 1939, during the course of a strike called by a local C. I. O. Union, the employer filed a complaint with the State Board alleging that the Union and its

members had engaged in unfair labor practices under the State Act. On July 1, 1939, the Union filed charges with the National Board alleging that the employer had engaged in unfair labor practices in violation of Section 8 (1), (3), and (5) of the National Act. On July 13, 1939, the State Board issued a decision finding that the Union and 14 of its members had committed unfair labor practices under the State Act through mass picketing and minor violence and ordered that they cease and desist therefrom. As a result in part of the proceedings before the State Board, the strike was abandoned on August 4, 1939. On September 29, 1939, the Union amended its charges of unfair labor practices pending before the National Board. Thereafter, pursuant to action taken by the regional office of the National Board, these charges were settled prior to issuance of a complaint by the National Board; the settlement included the reinstatement with full seniority and other rights and privileges of six employees who, the Union had charged, were discriminated against in violation of Section 8 (3) of the National Act. These six employees were among the 14 employees who had been found to have committed unfair labor practices by the State Board. Thereafter, in 1940, the State Board upon petition of the employer conducted an election among the employees to determine collective bargaining representatives, but excluded from the voting the said 14 employees, including the six employees who had been reinstated with full seniority and other rights and privileges pursuant to action taken by the regional office of the National Board. The State

Board thus disenfranchised six persons who under the National Act were apparently employees like all other employees and entitled to all the rights and privileges pertaining to employee status.

2. *Northern States Power Co., N. L. R. B., Case No. (XII-RE-3) RE-31; W. E. R. B., Case No. 1, No. 397 E-138, Decision No. 283*

In the summer of 1941, pursuant to Section 9 of the National Act, United Mine Workers of America, District #50, affiliated with the C. I. O. filed a Petition for Investigation and Certification of Representatives with the National Board. Petitioner contended that the employees at the Eau Claire, Wisconsin, plant of the Company constituted a unit appropriate for the purposes of collective bargaining. The Company, a utility operating in Minnesota and Wisconsin, had for four years had a contract with the International Brotherhood of Electrical Workers, affiliated with the A. F. of L., which established the entire system of the Company as an appropriate collective bargaining unit. The National Board dismissed the U. M. W. petition without formal hearing because, under its consistent policy respecting large integrated utilities and in view of the past history of bargaining relationships in this case, the Eau Claire unit was clearly inappropriate. The U. M. W. thereupon filed a Petition for Certification with the State Board, and that Board directed an election among the Eau Claire employees. Under Sections 111.02 (6) and 111.05 of the State Act, the State Board was without

discretion in the matter and was compelled to allow the Eau Claire employees to set themselves off from the larger unit if they so desired. The I. B. E. W. threatened to strike if the Company recognized the U. M. W. even if the latter won the State Board election; indeed the I. B. E. W. threatened to strike if the State Board even proceeded to hold the election. The Company then filed an employer petition with the National Board; that Board held formal hearings and made findings upholding the unit already in existence and under contract, and accordingly dismissed the petition on the basis that no question affecting representation existed. During the pendency of the National Board's proceeding the I. B. E. W. secured a temporary injunction from the Circuit Court of Dane County enjoining the State Board from holding the election it had ordered. The hearing on this matter, to make the injunction permanent, has not as yet been held. In sum, the difficulties in this case arose because of the differing standards for unit determination set forth in the State Act and the National Act.

3. *Fox River Valley Knitting Co., N. L. R. B., Case No. XII–C–742; W. E. R. B. Case No. 1, No. 432 E–149*

The International Ladies Garment Workers Union filed charges with the National Board alleging violations by the Company of Section 8 (1) and (3) of the National Act, and later filed a Petition for Investigation and Certification of Representatives pursuant to Section 9 of that Act.

Shortly thereafter a so-called Independent Union came into existence. The charge was amended to include an allegation of violation by the Company of Section 8 (2) with respect to the Independent. The National Board's investigation of the charges disclosed sufficient facts to warrant a conclusion of prima facie violation of Section 8 (1), (2), and (3). While the investigation was proceeding, the Independent Union filed a Petition for Certification with the State Board. The National Board advised the State Board of the pendency of the proceedings before the National Board. Thereafter the National Board, in accordance with its practice of securing compliance with the National Act voluntarily if possible, prepared a stipulation which would resolve all questions in dispute and which provided for disestablishment of the Independent. After all parties had tentatively indicated their approval of the stipulation, the State Board issued an Order and Direction of Election in which the Independent would appear on the ballot. This action of the State Board very nearly upset the entire adjustment and threatened to burden interstate commerce with a strike. The International Ladies Garment Workers Union let it be known that if the State Board proceeded with the election, the Union would be likely to strike. The Independent, which had been contemplating dissolution, secured a new lease on life through the indirect legalization of its existence inherent in the State Board's Order placing it on the ballot. Happily, the matter was finally disposed of as contemplated in the original stipulation but the disposition was

made much more difficult by the intrusion of the State Board after the National Board had taken jurisdiction.

It may be added that there is a vital difference in the practice of the National Board and the State Board in investigating representation petitions filed by alleged independent unions. Because experience has revealed that many employers have in the past formed company-dominated unions in the guise of independent unions, the National Board carefully investigates the origins of independent unions before permitting them to appear on the ballot. The State Board apparently imposes no such preliminary requirement. The result is that, as in the instant case, the Independent could easily have been certified as bargaining representative under the State Act. Yet under the National Act, the Independent existed in violation of the law, its existence was a continued threat to the free flow of commerce, and that threat was only removed with the disestablishment of the Independent.

4. *Creamery Package Mfg. Co., N. L. R. B. Case No. (XII-R-341) R-2705; W. E. R. B. Case III, No. 348 E-117*

Prior to May 17, 1941, the Steel Workers Organizing Committee organized the office employees of the Company and requested exclusive recognition. The Company refused such recognition and on May 17, 1941, filed a Petition for Investigation and Certification under the State Act with the State Board. On May 22, 1941, the S. W. O. C. filed a Petition for Investigation and Certification of Representatives under the National Act with

the National Board. The S. W. O. C. also moved before the State Board to dismiss the Company's petition. On June 23, 1941, the State Board denied the motion* and issued an Order and Direction of Election. On July 3, 1941, the National Board held a hearing on the petition pending before the National Board. On July 11, 1941, the State Board conducted its election among "all of the office employees of the Company at its Lake Mills plant except supervisory employees," which was won by the S. W. O. C. On July 16, 1941, the State Board certified the S. W. O. C. as exclusive bargaining agent of all of the office employees except supervisory employees. On August 8, 1941, the National Board issued its Decision and Certification of Representatives in which it certified the S. W. O. C. as the exclusive bargaining representative of all of the office employees of the Company at its Lake Mills plant except supervisory employees and confidential employees.

In its Memorandum, the State Board stated in part: " * * Should the National Labor Board set up a collective bargaining unit different from that determined by the Wisconsin Board, without any question, the unit set up by the National Labor Relations Board would be binding and would control the action of the employer. In that case, however; should a majority of the employees in the unit set up by the National Labor Relations Board vote against the unit, the only result would be a dismissal of the petition, and if a different unit were set up by the Wisconsin Board in which unit a majority of the employees voted in favor of representation, the employer would be bound under the terms of the Wisconsin law to bargain collectively with the employees of such unit through the union selected. We, therefore, deny the motion of the union to dismiss the petition."

The unit determined by the State Board thus differed somewhat from the unit determined by the National Board. The Company at first considered a refusal to bargain with S. W. O. C. pending resolution by court proceedings of the conflict in the unit findings. It was only after the S. W. O. C. threatened to strike that the Company agreed to accept the certification of the National Board.

The foregoing are not all of the examples of conflict and difficulty that have arisen through the concurrent exercise of jurisdiction over the same employer by the Wisconsin State Board and by the National Board.

On the other hand, there has been no conflict or difficulty in various other States which have enacted State Labor Relations Acts whose provisions and objectives are in harmony with those of the National Act, and whose state boards have evidenced a cooperative attitude in administering the state Acts. For example, the New York State Board has sought to avoid any impairment of the National Act by not assuming jurisdiction in cases in which the National Board has taken jurisdiction.

In Wisconsin, however, as above noted, we are of the view that the differing and conflicting provisions and objectives of the State Act have tended in practice to interfere with and frustrate the policies of the National Labor Relations Act.

Very sincerely yours,

(Sgd.) ROBERT B. WATTS,
Robert B. Watts,
General Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 252.—October Term, 1941.

Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, et al., Appellants.
vs.
Wisconsin Employment Relations Board and Allen-Bradley Company.

Appeal from the Supreme Court of the State of Wisconsin.

[March 30, 1942.]

Mr. Justice Douglas delivered the opinion of the Court.

The sole question presented by this case is whether an order of the Wisconsin Employment Relations Board entered under the Wisconsin Employment Peace Act (L. 1939, ch. 57; Wis. Stat. (1939) ch. 111, pp. 1610-18) is unconstitutional and void as being repugnant to the provisions of the National Labor Relations Act. 49 Stat. 449; 29 U. S. C. § 151 *et seq.*

Sec. 111.06(2) of the state Act provides in part:

"It shall be an unfair labor practice for an employe individually or in concert with others:

"(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in section 111.04,[1] or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

"(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

The state Board is given authority on the filing of a complaint to conduct hearings, to make findings of fact, and to issue orders.[2]

[1] Sec. 111.04 provides: "Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

[2] Sec. 111.07(4) provides in part: "Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this chapter for not more than one

§ 111.07. Orders of the state Board are enforceable by the circuit courts. *Id.* Appellee, Allen-Bradley Co., is engaged in the manufacturing business in Wisconsin. Appellant union is a labor organization composed of the employees of that company. The union had a contract with the company governing terms and conditions of employment. The contract was cancelled by the union. Thereafter the union by secret ballot ordered a strike, which was called on May 11, 1939. The strike lasted about three months during which time the company continued to operate its plant. Differences arose between the employees who were on strike and the company and those employees who continued to work. The company thereupon filed a petition with the state Board charging the union and certain of its officers and members with unfair labor practices. The union answered and objected, *inter alia*, to the jurisdiction of the state Board on the ground that as respects the matters in controversy the company was subject exclusively to the provisions of the National Labor Relations Act and to the exclusive jurisdiction of the federal Board. The state Board made findings of fact and entered an order against the union and its officers and members. On a petition for review, the circuit court sustained and enforced the Board's order. The Supreme Court of Wisconsin affirmed that judgment. 237 Wis. 164, 295 N. W. 791. The case is here on appeal. Judicial Code, § 237 (a); 28 U. S. C. § 344(a).

The findings and order of the state Board as summarized by the Supreme Court (237 Wis. pp. 168-170) are as follows:

"Briefly, from the findings the following facts appear:

"(a) Appellants engaged in mass picketing at all entrances to the premises of the company for the purpose of hindering and preventing the pursuit of lawful work and employment by employees who desired to work.

"(b) They obstructed and interfered with the entrance to and egress from the factory and obstructed and interfered with the free and uninterrupted use of the streets and sidewalks surrounding the factory.

"(c) They threatened bodily injury and property damage to many of the employees who desired to continue their employment.

"(d) They required of persons desiring to enter the factory, to first obtain passes from the union. Persons holding such passes were admitted without interference.

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year, and require him to take such affirmative action, including reinstatement of employes with or without pay, as the board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which it has complied with the order."

"(e) They picketed the homes of employees who continued in the employment of the company.

"(f) That the union by its officers and many of its members injured the persons and property of employees who desired to continue their employment.

"(g) That the fourteen individual appellants who were striking employees, had engaged in various acts of misconduct. The facts relating to those were found specifically. The acts consisted of intimidating and preventing employees from pursuing their work by threats, coercion, and assault; by damaging property of employees who continued to work; and as to one of them by carrying concrete rocks which he intended to use to intimidate employees who desired to work.

"Based upon these findings the board found as conclusions of law, that the union was guilty of unfair labor practices in the following respects:

"(a) Mass picketing for the purpose of hindering and preventing the pursuit of lawful work.

"(b) Threatening employees desiring to work with bodily injury and injury to their property.

"(c) Obstructing and interfering with entrance to and egress from the factory.

"(d) Obstructing and interfering with the free and uninterrupted use of the streets and public roads surrounding the factory.

"(e) Picketing the homes of employees.

"As to the fourteen individual appellants, the board concluded that each of them was guilty of unfair labor practices by reason of threats, assaults, and other misdemeanors committed by them as set out in the findings of fact.

"Based upon its findings of fact and conclusions of law the board ordered that the union, its officers, agents, and members—

"(1) Cease and desist from:

(a) Mass picketing.
(b) Threatening employees.
(c) Obstructing or interfering with the factory entrances.
(d) Obstructing or interfering with the free use of public streets, roads, and sidewalks.
(e) Picketing the domiciles of employees.

"The order required the union to post notices at its headquarters that it had ceased and desisted in the manner aforesaid and to notify the board in writing of steps taken to comply with the order.

"As to the fourteen individual appellants, the order made no determination based upon the finding that they were individually guilty of unfair labor practices."

It was admitted that the company was subject to the National Labor Relations Act. The federal Board, however, had not under-

taken in this case to exercise the jurisdiction which that Act conferred on it. Accordingly, the Supreme Court of Wisconsin upheld the order of the state Board stating that "there can be no conflict between the acts until they are applied to the same labor dispute." It was urged before that court, as it has been here, that there was nevertheless a conflict between that part of the findings of the state Board which deals with the individual appellants and the National Labor Relations Act. The contention is that the individual appellants who were found guilty of unfair labor practices, as defined in the state Act, are under the terms of the federal Act still employees of the company,[3] while under the state Act that relationship is severed.[4] As to that alleged conflict the Wisconsin Supreme Court made two answers: First, the federal Act had not been applied to this labor dispute. Second, it is the order, not the findings, of the state Board which affects the employer and employee relationship. Since there was no provision in the order which suspended the status as employees of the fourteen individual appellants who were found guilty of unfair labor practices, there was no conflict as to their employee status under the state and federal Acts.

Various views have been advanced here. On the one hand, it is urged that in this situation, as in the case of federal control over intrastate transportation rates (*Shreveport Case*, 234 U. S. 342, 357; *Board* v. *Great Northern Ry. Co.*, 281 U. S. 412, 424, 426-428), state action should not be foreclosed in absence of a finding by the federal Board under § 10(a) that an employer's labor practice so affects interstate commerce (*National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601) that it should be prevented. On the other hand, it is earnestly contended that the state Act viewed as a whole so undermines rights protected and granted by the federal Act and is so hostile to the policy of the federal Act that it should not be allowed to survive. Acceptance of the latter theory would necessitate a reversal of the judgment below. Acceptance of the

[3] See Republic Steel Corp. v. National Labor Relations Board, 107 F. 2d 472, 479 (aff'd 311 U. S. 7); National Labor Relations Board v. Stackpole Carbon Co., 105 F. 2d 167, 176; Hart & Prichard, The Fansteel Case: Employee Misconduct and the Remedial Powers of the National Labor Relations Board, 52 Harv. L. Rev. 1275.

[4] Sec. 111.02(3) defines the term "employe" as including "any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and . . . (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, ..."

former would mean that in all cases orders of the state Board would be upheld if the federal Board had not assumed jurisdiction.

We deal, however, not with the theoretical disputes but with concrete and specific issues raised by actual cases. *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132; *United States* v. *Appalachian Power Co.*, 311 U. S. 377, 423, and cases cited. "Constitutional questions are not to be dealt with abstractly." *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8, 22; *Arizona* v. *California*, 283 U. S. 423, 464. They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. *Tennessee Publishing Co.* v. *American National Bank*, 299 U. S. 18, 22. Nor will we assume in advance that a State will so construe its law as to bring it into conflict with the federal Constitution or an act of Congress. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 246; *Great Atlantic & Pacific Tea Co.* v. *Grosjean*, 301 U. S. 412, 429-430; *Watson* v. *Buck*, 313 U. S. 387. Hence we confine our discussion to the precise facts of this case and intimate no opinion as to the validity of other types of orders in cases where the federal Board has not assumed jurisdiction.

We are not under the necessity of treating the state Act as an inseparable whole. Cf. *Watson* v. *Buck*, *supra*. Rather, we must read the state Act for purposes of the present case as though it contained only those provisions which authorize the state Board to enter orders of the specific type here involved. That Act contains a broad severability clause.[5] The Wisconsin Supreme Court seems to have been liberal in interpreting such clauses so as to separate valid from void provisions of statutes.[6] Aside from that, Wisconsin in this case has in fact applied only a few of the many provisions of its Act to appellants. And we have the word of the Wisconsin Supreme Court that "the act affects the rights of parties to a controversy pending before the board only in the manner and to the extent prescribed by the order." 237 Wis. p. 183. That construction is conclusive here. *Senn* v. *Tile Layers Union*, 301

[5] Sec. 111.18 provides: "If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

[6] See *State* v. Tuttle, 53 Wis. 45; *State* v. Ballard, 158 Wis. 251; *State* v. Board of State Canvassers, 159 Wis. 216; *State* v. Lange Canning Co., 164 Wis. 228; *State* v. Marriott, 237 Wis. 607.

U. S. 468, 477; *Minnesota* v. *Probate Court*, 309 U. S. 270, 273, and cases cited. Hence we need not speculate as to whether the portions of the statute on which the order rests are so intertwined with the others that the various provisions of the state Act must be considered as inseparable. Since Wisconsin has enforced an order based only on one part of the Act, we must consider that portion exactly as Wisconsin has treated it—"complete in itself and capable of standing alone". *Watson* v. *Buck*, *supra*, p. 397. Viewed in that light, no conflict with the National Labor Relations Act exists.

The only employee or union conduct and activity forbidden by the state Board in this case was mass picketing, threatening employees desiring to work with physical injury or property damage, obstructing entrance to and egress from the company's factory, obstructing the streets and public roads surrounding the factory, and picketing the homes of employees. So far as the fourteen individuals are concerned, their status as employees of the company was not affected.

We agree with the statement of the United States as *amicus curiae* that the federal Act was not designed to preclude a State from enacting legislation limited to the prohibition or regulation of this type of employee or union activity. The Committee Reports[7] on the federal Act plainly indicate that it is not "a mere police court measure" and that authority of the several States may be exerted to control such conduct. Furthermore, this Court has long insisted that an "intention of Congress to exclude States from exerting their police power must be clearly manifested". *Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605, 611, and cases cited; *Kelly* v. *Washington*, 302 U. S. 1, 10; *South Carolina State Highway Dept.* v. *Barnwell Bros., Inc.*, 303 U. S. 177; *H. P. Welch Co.* v. *New Hampshire*, 306 U. S. 79, 85; *Maurer* v. *Hamilton*, 309 U. S. 598, 614; *Watson* v. *Buck*, *supra*. Congress has not made

[7] S. Rep. No. 573, 74th Cong., 1st Sess., p. 16: "Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. The Norris-LaGuardia Act does not deny to employers relief in the Federal courts against fraud, violence or threats of violence. See 29 U. S. C. § 104(e) and (i)." And see H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 16-17; Report of the National Labor Relations Board, Hearings before the Senate Committee on Education and Labor, 76th Cong., 1st Sess., on S. 1000, S. 1264, S. 1392, S. 1550, S. 1580, and S. 2123, Part 3, p. 521.

such employee and union conduct as is involved in this case subject to regulation by the federal Board. Nor are we faced here with the precise problem with which we were confronted in *Hines* v. *Davidowitz*, 312 U. S. 52. In the *Hines* case a federal system of alien registration was held to supersede a state system of registration. But there we were dealing with a problem which had an impact on the general field of foreign relations. The delicacy of the issues which were posed alone raised grave questions as to the propriety of allowing a state system of regulation to function alongside of a federal system. In that field any "concurrent state power that may exist is restricted to the narrowest of limits". p. 68. Therefore we were more ready to conclude that a federal act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. *Maurer* v. *Hamilton, supra*, and cases cited. Here we are dealing with the latter type of problem. We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard.

Furthermore, in the *Hines* case the federal system of alien registration was a "single integrated and all-embracing" one. p. 74. Here, as we have seen, Congress designedly left open an area for state control. Nor can we say that the control which Congress has asserted over the subject matter of labor disputes is so pervasive (Cf. *Cloverleaf Butter Co.* v. *Patterson*, 314 U. S. —) as to prevent Wisconsin under the familiar rule of *Pennsylvania R. Co.* v. *Public Service Commission*, 250 U. S. 566, 569, from supplementing federal regulation in the manner of this order. Sec. 7 of the federal Act guarantees labor its "fundamental right" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33) to self-organization and collective bargaining. Sec. 8 affords employees protection against unfair labor practices of employers including employer interference with the rights secured by § 7. Sec. 9 affords machinery for providing appropriate collective bargaining units. And § 10 grants the federal Board "exclusive" power of enforcement. It is not sufficient, however, to show that the state Act *might* be so construed and applied as to dilute, impair, or defeat those rights. *Watson* v. *Buck, supra*. Nor is the unconstitutionality of the provisions of the state Act which underly the present order established by a showing that other parts of the statute are incompatible with and hostile to the policy expressed

in the federal Act. Since Wisconsin has applied to appellants only parts of the state Act, the conflict with the policy or mandate of the federal Act must be found in those parts. But, as we have said, the federal Act does not govern employee or union activity of the type here enjoined. And we fail to see how the inability to utilize mass picketing, threats, violence, and the other devices which were here employed impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the federal Act. Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy. If the order of the state Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See *Sinnot* v. *Davenport*, 22 How. 227, 243.

In sum, we cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. Indeed if the portions of the state Act here invoked are invalid because they conflict with the federal Act, then so long as the federal Act is on the books it is difficult to see how any State could under any circumstances regulate picketing or disorder growing out of labor disputes of companies whose business affects interstate commerce.

We rest our decision on the narrow grounds indicated. We have here no question as to constitutional limitations on state control of picketing under the rule of *Thornhill's* case. 310 U. S. 88. Nor are any other constitutional questions concerning the Wisconsin Act properly presented. And in view of our disposition of the case we find it unnecessary to pass on other questions raised by the appellees.

Affirmed.